

JACINTO PRESBITERO ET AL., PETITIONERS, VS. JUDGE SOTERO RODAS AND FINANCING CORPORATION OF THE PHILIPPINES, RESPONDENTS.

G.R.No. 48121. October 11, 1941

Ponente: OZAETA, J.

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OZAETA, J.:

This is a petition for prohibition arising from the following facts:

In civil case No. 8466 of the Court of First Instance of Occidental Negros, entitled "Financing Corporation of the Philippines, plaintiff, vs. Jacinto Presbitero et al., defendants," said court rendered its decision on November 7, 1940, the dispositive part of which reads as follows:

"En su consecuencia, el Juzgado dicta sentencia condenando a los demandados Jacinto P. Presbitero, Salvacion I. de Presbitero, Matilde Ginete, Jose Ginete, y Monserrat Ginete, asistida por su esposo Esteban Bobe (1) a pagar a la demandante dentro del plazo de tres meses desde la fecha de esta sentencia la suma de P72,905.96, mas los intereses devengados a razon de 9 por ciento al ano desde el 16 de agosto de 1940 hasta su completo pago; mas 10 por ciento de la suma total adeudada en concepto de honorarios de abogado; (2) que si expirado el plazo de tres meses arriba mencionado los demandados dejaren de pagar a la demandante las cantidades indicadas arriba, el Juzgado ordena al Sheriff de esta provincia ejecute y venda las propiedades hipotecadas a la demandante mencionadas y descritas en los anexos A, B, C, D y E de la demanda en esta causa; (3) que si el producto de la venta no fuere suficiente para cubrir todo el importe de la sentencia, que se expida el correspondiente decreto por el saldo o deficit que resultare; y por ultimo (4) condena a los demandados a pagar las costas del juicio."

After the defendants had filed a notice of appeal from said decision, the court, upon motion of the plaintiff, entered an order on December 17, 1940, in which it stated that the appeal was taken "for the sole purpose of delaying the proceeding to the great damage and prejudice of the plaintiff herein," and ordered that writ of execution issue unless the defendants gave a supersedeas bond in the sum of P92,000 within thirty days.

On January 14, 1941, the defendants moved the court to reduce the bond from P92,000 to P80,000 and to grant them an extension of thirty days within which to file it.

The motion to reduce was denied but the court granted the defendants ten days from January 22, 1941, within which to file the bond.

On February 5, 1941, the court entered the following order:

"Habiendo transcurrido ya los diez dias de plazo qve esto Juzgado en su auto de fecha 22 de enero de 1941 concedio a los demandados para prestar una fianza de P92,000 al objeto de suspender la execution de la sentencia recaJda en esta causa, a petition de la entidad demandante de fecha 4 de febrero de 1941, el Juzgado ordena la expedition de un mandamiento de ejecucion de la citada decision tan pronto hayan expirado los 90 dias que se mencionan en la referida decision."

On March 26, 1941, the court approved the record on appeal presented by the defendants.

Alleging that the above-quoted order of February 5, 1941, was issued in excess of the jurisdiction of the trial court, the petitioners (defendants below) ask us to prohibit the respondent judge from enforcing said order pending the determination of the appeal interposed by them. It is alleged in the sworn petition that the assessed value of the mortgaged property is about P150,000, which allegation is neither admitted nor denied by the respondent corporation, which avers that it has no knowledge of the true assessed value of the mortgaged property.

Upon the facts above stated, we think the proper remedy for the petitioners, if any, is certiorari to annul or modify the order of the respondent judge for the filing of a supersedeas bond (section 1, rule 67), and not prohibition to require the respondent judge to desist from enforcing said order. (See *Valdez vs. Querubin*, 37 Phil., 774.) But since the respondents raise no question on this score, and since the allegations of the petition herein are also appropriate to a petition for certiorari, we feel warranted in treating this action as one for certiorari, under the liberal construction enjoined by section 2, rule 1.

The question raised is whether or not the respondent judge acted in excess of his jurisdiction, or with grave abuse of discretion, in ordering the execution of his judgment pending appeal unless the defendants gave a supersedeas bond of P92,000. Section 2 of rule 39 provides as follows:

"Sec. 2. Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

This rule empowers the Court of First Instance, in its discretion, to order the execution of its judgment pending appeal provided it states good reasons for so doing, and to stay the execution upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part. The court stated in its order that the appeal was being taken for the purpose of delay. Assuming, as we must, that such statement is true, it not having been assailed in the petition, we consider it good and sufficient reason upon which to issue execution of the judgment pending appeal. Dilatory tactics constitute a great drawback to the administration of justice and cannot be countenanced by the courts. We hold that the trial court neither exceeded its jurisdiction nor committed a grave abuse of discretion in ordering the execution of its judgment pending appeal, upon the reason given.

We find, however, that the supersedeas bond of P92,000 which the respondent judge fixed to stay the execution pending appeal is excessive. It was apparently intended to cover the full amount of the judgment, without taking into consideration the real estate mortgage by which it is secured. It seems that the trial court fixed the supersedeas bond as if the case were an ordinary civil action for the recovery of a sum of money, when as a matter of fact it was a foreclosure of a real estate mortgage. In such a case, the only purpose of the supersedeas bond is to secure the payment of any deficiency judgment that may be entered against the defendants, on the theory that by reason of the delay caused by the appeal the mortgage may become inadequate to secure the full payment of the judgment, for the value of the mortgaged property may fall in the meantime that the interest on the principal of the judgment piles up. We believe that a Supersedeas bond of P10,000 would be adequate for the purpose, and that in fixing the amount at P92,000 under the circumstances the trial court committed such a grave abuse of discretion as to warrant this court's interposition.

Wherefore, with the modification that the supersedeas bond shall be reduced from P92,000 to P10,000, the order of the respondent judge, dated December 17, 1940 (Annex D of respondent corporation's answer), is hereby affirmed, and writ of execution shall issue in said civil case No. 8466 of the Court of First Instance of Occidental Negros unless the defendants (petitioners herein) file such bond as hereby reduced, and the same is approved by the trial court, within five days from the entry of final judgment herein. No finding as to costs. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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